



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 16, 1993

Mr. Gregory D. Humbach
City Attorney
City of Wichita Falls
PO Box 1431
Wichita Falls, Texas 76307

OR93-560

Dear Mr. Humbach:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 21219.

The City of Wichita Falls (the "city") received an open records request for "any and all personnel records" of a named police officer. You have submitted to this office for review four groups of documents that you have designated as "Personnel File -- Personnel Department," "Personnel File -- Police Department," "Internal Affairs Investigation -- Police Department," and "Training File -- Police Department." You contend that all of the above named files are made confidential pursuant to section 143.089 of the Local Government Code. You also contend that the records contained in the "Internal Affairs Investigation -- Police Department" file are excepted from required public disclosure pursuant to section 552.108 (former section 3(a)(8)) of the Open Records Act.

In Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel files maintained by police departments in cities that have adopted the fire fighters' and police officers' civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Section 143.089 of the code provides for the creation of two personnel files for police officers: one that is maintained by the city's civil service director and the other by the city police department. Section 143.089(g) provides that

¹The 73d Legislature has repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg. ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

the [police] department may not release any information contained in the *department file* to any agency or person requesting information relating to a . . . police officer. The department shall refer to the director [of civil service] or the director's designee a person or agency that requests information that is maintained in the . . . police officer's personnel file. (Emphasis added.)

The set of records that you have designated as "Personnel File -- Police Department" apparently were gathered by the city police department pursuant to section 143.089(g); accordingly, the city may withhold those records.²

We also note that the Texas Supreme Court may consider the question of whether section 143.089(g) also makes confidential all other departmental records that directly pertain to police officers. *See City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ requested). In light of the pendency of this litigation, it would be inappropriate for this office to rule on the applicability of section 143.089(g) to the records you have designated as "Internal Affairs Investigation -- Police Department"³ and "Training File -- Police Department" at this time. At this point it appears that the outcome of the *City of San Antonio* case may determine the resolution of your claim under section 143.089(g) with regard to these two sets of records and may moot any decision this office might reach regarding the application of this provision. For these reasons, we are at this time closing the file with regard to these two files without reaching a ruling. We advise that the city await further action of the supreme court relative to *City of San Antonio*. In the meantime, the city may withhold these records.

Because the records you have designated as "Personnel File -- Personnel Department" are apparently maintained by the city's personnel department, these records clearly do not come within the scope of section 143.089(g). This office must therefore determine whether these personnel records are otherwise excepted from required public disclosure under the Open Records Act. Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision Nos. 455 (1987); 325 (1982), we will raise sections 552.101 (former section 3(a)(1)) and 552.117 (former section 3(a)(17)) because the release of confidential information could impair the rights of third parties and because its improper release constitutes a misdemeanor. *See* V.T.C.S. art. 6252-17a, § 10(a).

Section 552.101 of the act protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law

²This office assumes that the city, in compliance with section 143.089(g), referred the requestor to the director of civil service for the records maintained by that branch of the city.

³This office therefore need not address the applicability of section 552.108 to this file at this time.

right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. We have marked the information contained in this file that the city must withhold pursuant to section 552.101. *See generally* Open Records Decision No. 600 (1992) (copy enclosed).

The city must also withhold pursuant to section 552.117(1)(A) the police officer's home address and telephone number from all documents containing these types of information. *See* Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). The city must release, however, all remaining information contained in the city personnel file.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Toya Cirica Cook
Assistant Attorney General
Open Government Section

TCC/rho

Ref.: ID# 21219
ID# 21538

Enclosures: Open Records Decision No. 600
Submitted documents (w/markings)

cc: Mr. Brett Jones
Times Record News
1301 Lamar
Wichita Falls, Texas 76307
(w/o enclosures)